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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by International Educational Development, Inc.,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200'0'049'*

ENG

HUMAN RIGHTS IN IRAN

1. In 1995 International Educational Development submitted a written statement (United Nations Document E/CN.4/Sub.2/1995/55) to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on Promotion and Protection of Human Rights) in which we provided information about a person named Jamshid Tafrishi-Enginee. In our statement we pointed out that while Mr. Tafrishi-Enginee had spent about 18 months with the National Liberation Army (NLA) of the National Council of Resistance of Iran, we believed that he was in fact an agent of the regime in Iran with an assignment to gather intelligence on Iranian exiles, to seek ways and means for discrediting them and all opponents of the regime, and to carry out misinformation campaigns against them. Mr. Tafrishi now freely admits that we were correct.

2. Mr. Tafrishi has recently written letters in which he reveals that the Intelligence Ministry of the Iranian regime hired him (apparently paying him $72,000 in addition to travel and other expenses) especially to carry out a misinformation campaign about the NLA, with false accusations that the NLA had itself engaged in violations of human rights or intimidation or extortion of the Iranian exile community. A number of human rights organizations were treated to false testimony and government-orchestrated letter writing campaigns. Unfortunately, some of these organizations may have believed this misinformation. Sadly, this campaign appears to have succeeded in shifting attention away from the serious violations of humanitarian law being committed by the Irani military forces as well as the continuing gross pattern of human rights violations taking place throughout the country. Perhaps if the international community has responded to Mr. Tafrishi as we did – we thought Mr. Tafrishi was so clearly inept for his job anyone could see him for what he was – there would still be strong international action regarding Iran.

3. In other work on the situation in Iran, we have expressed outrage over the staggering number of political prisoners executed in the regime's jails. Now it appears we were conservative in our tally of these executions: Mr. Hossein Ali Montazeri, former designated successor to Khomeini, Iran's Supreme Leader at the time, recently made public shocking documents indicating that as many as 30,000 political prisoners were killed in 1988 alone. Iran's current leaders, including Mr. Khamenei, Mr. Khatami and Mr. Rafsanjani, as well as the officials still in charge of the Judiciary, played the primary role in this massacre.[1]

4. The documents made public by Mr. Montazeri include the text of Khomeini's fatwa in Summer 1988, which read in part:

> "Those who are in prisons throughout the country and remain steadfast in their support for the Monafeqin [Mojahedin], are waging war on God and are condemned to execution.... Annihilate the enemies of Islam immediately. As regards the cases, use whichever criterion that speeds up the implementation of the [execution] verdict."

Other documents made public by Mr. Montazeri show that on July 31, 1988 alone, about 3,800 persons were killed, only three days after the beginning of this bloody massacre. On the same day, in a letter to Khomeini, Mr. Montazeri wrote:

> "At least order to spare women who have children and finally, the execution of several thousand prisoners in a few days will not have positive repercussions and will not be mistake-free. . . . A large number of prisoners have been killed under torture by their interrogators. . . . In some prisons of the Islamic Republic young girds are being raped by force. . . . As a result of unruly torture, many prisoners have become deaf or paralyzed or afflicted with chronic diseases."

5. Gross human rights violations in Iran did not end in 1988. In his latest report to the General Assembly, Maurice Copithorne, the Commission's Special Representative on Iran attests to high rates executions and of particularly gruesome torture, continued discrimination of women and religious minorities, and curtailment of freedom of the press under conditions that he calls "truly draconian."[i]

6. The continuing flagrant violations of human rights in Iran and the shocking massacres of 1988 are irrefutable cases of crimes against humanity. These violations took place and continue in the course of an on-going civil war and are related to that war. Accordingly, the international community is, under the provisions of the Geneva Conventions of 1949 and other instruments of humanitarian law, under an obligation to seek out and try those responsible. Such a trial is not limited to a special international tribunal, but may take place in the courts of any party to the Geneva Conventions.[iii]

7. International Educational Development/Humanitarian Law Project urges the Commission as a whole as well as its individual members to undertake appropriate action in light of grave breaches of humanitarian law committed by the Irani regime. We also urge the Commission to continue the mandate of its Special Representative.

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[i] The state-run daily Iran News, made a reference to this massacre on April 9, 2000: "The decree was issued at a time when President Khatami, was the deputy to the Commander of the Armed Forces Staff in ideological and cultural affairs. He implemented the Imam (Khomeini)'s decree most decisively."

[ii] United Nations Document A/55/363 at para. 13.

[iii] See, for example, Geneva Convention IV of 1949, United Nations Treaty Series Vol. 75, p. 267: "Each High Contracting Party shall be under an obligation to search for persons alleged to have committed , or to have ordered to have committed, . . .grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.

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Fifty-seventh session
Item 11(a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by Inclusion International,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. *200'0'0495*

ENG

Statement concerning the detention and mistreatment of people with intellectual disabilities

The International Covenant on Civil and Political Rights covers a number of fundamental rights, among them the right of self-determination (Article 1), the inherent right to life (Article 6), and the right to be treated with respect and dignity (Article 10).

In many parts of the world, human beings regrettably endure violations of their right not to be subjected to torture; to cruel, inhuman or degrading treatment or punishment; or to medical or scientific experimentation without consent, as well as their right to liberty and security of person (Articles 7 and 9).

Such practices are deplorable, and all agree that they should be condemned, wherever they occur.

Inclusion International would like to draw to the attention of this Commission the fact that children and adults with intellectual disabilities (estimated at 60 million throughout the world) are frequently subjected to similar practices. Yet despite such clear violations of the human rights of these people, very few voices are raised in protest. Those who do raise their voices meet with indifference.

Does this imply a general consensus that people with intellectual disabilities are not entitled to basic human rights?

Such an idea is intolerable.

Confusion of intellectual disability with psychopathology

Part of the problem lies in traditional assimilation of "mental retardation" with "mental illness". Intellectual disability is not a disease. It is a permanent condition with which the person must live for his/her entire lifetime. Although it cannot be cured, the disability can be alleviated thanks to appropriate social and educational supports.

In the majority of cases, people with intellectual disability present no danger whatsoever for the community.

Nevertheless, placement in psychiatric establishments of adults with intellectual disabilities is commonly justified on the grounds of "seriously aggressive and/or irresponsible behaviour," not because the person demonstrates such behaviours, but because it is presumed that such behaviours can (and will) occur.

In sum, the person has been charged and confined for an act or acts which have yet to be committed, on the suspicion that s/he is potentially capable of behaving in such a way. No burden of proof is required, only a blanket supposition.

Such prejudicial thinking clearly signifies discrimination, if not racism.

Inclusion International would like to make the observation that, when given adequate supports and treated respectfully, the majority of persons with intellectual disabilities do not have behavioural problems. In fact, they are far more likely to develop behaviour problems by being placed in psychiatric institutions, than to be cured of them in such settings.

Placement in psychiatric institutions of people with intellectual disabilities who do not require such care should not be justified simply because less restrictive forms of support are "unavailable."

Personal expression denied

What opportunity is there for people with intellectual disability living in large, impersonal institutions to protest their detention or mistreatment?

Some people with intellectual disabilities have difficulty indicating their preferences because of communication difficulties. Research has shown that their silence is easily interpreted as indifference or insensitivity, leading to voluntary or involuntary abuse.

Other people with intellectual disabilities are coerced unawares into "informed consent" because their life experiences have been so restricted they do not know that they have the right to chose or how to judge between the alternatives. Moreover, they are anxious to please. The field for abuse is left wide open.

Those who are capable of expressing their refusal of a prejudicial act or situation, can see their protestations easily discounted as demonstrations of the disability. If their desires are contrary to what the institution intends to impose, the easy response is that they are incapable of understanding what is in "their best interest" (this being defined by staff who are not necessarily disinterested parties).

The traditional association of intellectual disability with mental illness is particularly traitorous when disagreement is taken as evidence of an emotional disorder. The rapidly spreading notion of challenging behaviour as proof of psychopathology in people with intellectual disabilities (otherwise known as "dual diagnosis") is an open invitation to invalidation of what may be legitimate wishes.

Psychotropic medications are often administered, simply to keep people in institutions under control. Some of these drugs render people mute with confusion (in other words they muzzle dissent). Their long-term administration, beyond the risk of polypharmacy and over-dosage, can have irreversible consequences for the life expectancy of the persons concerned.

Thus people in institutions can be deprived not only of the freedom to exercise self-determination, but of their health.

Inadequate and inappropriate care

In a number of countries, living conditions in special institutions are appalling: large promiscuous wards where privacy is impossible; several tenants to a single bed, without mattress or blankets; caged beds where it is impossible to stand upright; leg chains soldered to furniture or to the walls; squalid facilities for personal hygiene.... Such conditions are destructive to both health and personal development, to the point of depriving people with intellectual disabilities of any chance to enjoy quality of life.

Many people with intellectual disabilities have biological problems which are neglected because personnel do not consider such people worthy of medical attention, or because the institutions are ill-equipped to deal with such conditions.

Physically and mentally degrading treatment

Behind the walls of institutions, out of sight and out of mind, inmates are subjected to dehumanizing and punitive procedures. Women are particularly vulnerable to sexual abuse. Training manuals for staff may openly condone physical restraints and seclusion. Electro-convulsive therapy and "aversive techniques" involving physically or emotionally painful stimuli may be applied to modify and/or control behaviour.

In other cases, medical procedures which would be unauthorized in any other context are freely admitted: women with intellectual disabilities are sterilized without their knowledge, much less their consent; regardless of their sex, inmates may be physiologically exploited for research purposes.

Such practices were condemned when they occurred in Nazi concentration camps. Who condemns them today?

Inclusion International concurs with the UN Special Rapporteur Bengt Lindqvist who, in his report last year to the Commission for Social Development, made the observation that the *United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities* provide "no guidance concerning the handling of institutions, where still a great number of person with disabilities spend their whole lives under miserable circumstances."

The Standard Rules are currently in the process of review, and the Special Rapporteur will prepare proposals for revisions by the end of this year.

In the meantime, Inclusion International submits that national policies encouraging institutionalization of children and adults with intellectual disabilities are inconsistent with basic human rights.

Such policies tolerate, even encourage, unjustified detention, degrading treatment and painful if not life-threatening practices.

Inclusion International respectfully suggests that this Commission condemn such policies, as well as the practices.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement*/ submitted by the World Federation of Democratic Youth, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200'0'0532*

ENG

WFDY MISSION TO PALESTINE

Horrible Experiences of Israeli Aggression against Palestinian Civilians

A 10-member delegation of World Federation of Democratic Youth (WFDY) visited Palestine and Israel from 2-6 November 2000. The delegation was composed of Cyprus (EDON), Brazil (JR8), France (MJCF), Greece (KNE), Italy (Giovani Comunisti), South Africa (ANC-YL) and WFDY's Secretariat.

A delegation of Asian Students Associations also visited Palestine during the same time. The delegation had the opportunity to visit Gaza, Ramallah, Hebron, Neblus and Nezerth where the brutal aggression of the Israeli Armed Forces is committed against the Palestinian civilians including children. The delegation witnessed the manner in which the Israeli Armed Forces are using highly sophisticated weapons against the Palestinian civilian including youth and children.

The delegation eye witnessed the Israeli Army helicopters launched missiles attacks against civil residential areas in Ramallah on the pretext of destroying Al-Fateh offices. These offices are located in the city, where civilian Palestinians are living.

The delegation also visited the General Hospital in Neblus and met the Director General of the hospital. He informed the delegation that there were 365 injured people brought in the hospital. Among them 30 people have since died. Vast majority of those killed were hit by Israeli Army on the upper part of the body like chest, neck and head. Among the people brought in the hospital, 80 were below the age of 18. This is clearly reflects the volume of excessive force used by the Israeli Army against Palestinian civilians. The Delegation collected samples of the ammunition, which were operated from the bodies. The ammunition includes highly powerful explosives. It was documented that typical "butterfly" bullets were used against the civilians. Beside its highly killing ability, if it did not kill then this kind of bullets could paralyze the human person for the rest of his life.

The delegation witnessed the brutal massacres carried out by the Israeli Armed Forces against Palestine civilians in the West Bank, Gaza Strip and inside Israel. Israel has dangerously increased the level of aggression in an unprecedented way. Till now 250 Palestinians were killed and more than 10000 are seriously wounded, among them 500 feared to be paralysed for all life, by the belligerent Israeli Armed Forces all over Palestine and inside Israel. Everyday the Palestinian bury the bodies of their killed people and especially youth and children.

The delegation witnessed that the Israeli Forces are clearly using excessive force against the Palestinians civilians. The delegation witnessed that the Israeli Army shoot at the chest, neck and head of the Palestinian children, just few meters away from the venue where the delegation was located. We were shocked to see the arbitrary shooting of civilian targets which cannot be justified and against all laws and cannons of civilized life. As the conflict is between civilian Palestinians and organized forces, it was clear that there was no danger to any little extent to the life of the Israeli soldiers. They are using sniper rifles from a long distance, where it was not possible to throw a stone on them. These boys who were there in Nablus and Ramallah could not reach with stones, in any case, at the Israeli soldiers. There is clear evidence that the use of certain weapons against the Palestinian civilians including that of children and non-military buildings is totally out of proportion with the capacity of its victims to retaliate. The shelling of the houses as well as the use of assault helicopters to attack civilians using a whole range of weapons is a clear evidence of this brutality.

The delegation has visited the Civil Hospital in Gaza, where the same story was repeated. The Hospital was over crowded with the injured, many of them seriously, who were the victims of the clear excessive use of force, by hitting the people, including children on their upper part of body, including that of chest, neck and head. Many among them are feared to be paralyzed for all life, according to the expert opinion of doctors treating them in the hospital. The delegation also visited the spot where the 12-year old Mohammad Al-Durrah from Al-Bureij Refugee Camp in Gaza Strip was savagely killed by the Israeli soldiers.

Delegation visited the city of Nezreth, in Israel, where it met with the Mayor of the city, who informed that the Israeli Police have opened fire on peaceful demonstration opposing the killings of Palestinian civilians carried out by the Israeli Army. Police and security forces interfered using automatic weapons and killed 5 people. The delegation also visited one family, whose young son Ezad was killed by Israeli police.

In the light of the above said facts witnessed by the delegation during its visit to the places of confrontation, homes and families of victims killed by Israeli soldiers as well as meetings with various civil society and human rights organizations in Palestine and Israel, we conclude that the situation arising out of the aggression by Israeli Army against the Palestinian civilians is highly dangerous. The World Federation of Democratic Youth (WFDY) affirmed as the following:

1. To deploy the International Protection Force to save the lives of the Palestinian civilians from the brutal aggression of Israeli Army.
2. To halt immediately all military operations and killings of Palestinian civilians carried out by the Israeli Armed Forces.
3. Israel should immediately withdraw all its Armed Forces from the areas controlled by Palestinian National Authority, which is a immediate cause of provocation.
4. WFDY calls upon the international public opinion, civil society organizations and individuals all over the world to exert pressure upon their governments to stop their incriminating silence and fulfil their legal and moral obligations towards the Palestinian people by signing protest letters and petitions to the Prime Minister of Israel, UN Secretary General and to the Chiefs of the Embassies/Missions of Israel.
5. WFDY calls on the United Nations along with other members of the international community to form a commission to thoroughly investigate the brutalities committed by the Israeli Armed Forces of against the Palestinian civilians.

WFDY calls upon all its member and friendly organizations, human rights organizations and all the democratic and progressive forces to come forward and express their solidarity with the people of Palestine, strongly condemn Israel for committing crimes against humanity and for the aggression against Palestinian civilians and to demand Israeli government to immediately stop this aggression.

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INDIGENOUS ISSUES

Written statement*/ submitted by the Aboriginal and Torres Strait Islander Commission, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 January 2001]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200'0'0536*

ENG

The Aboriginal and Torres Strait Islander Commission ("**ATSIC**") expresses its grave concerns in relation to the processes which have developed in the Commission on Human Rights Working Group on the UN Declaration on the Rights of Indigenous Peoples ("**the Working Group**"). We note with dismay the development of adversarial approaches in the Working Group, and the increasing polarisation of indigenous and State delegations into separate and opposed blocs. This trend was more evident at the 6th session of the Working Group, held 20 November – 1 December 2000, than at any previous session.

Since the earliest sessions of the Working Group, ATSIC has sought to engage States in dialogue and has emphasised the importance of flexible, frank and consensual methods of work. We have maintained a position that the Declaration ought be capable of being adopted without amendment, alteration or deletion. However, in an effort to enhance dialogue, we have suggested some basic criteria to be met by proponents of change. We have said that the first of these criteria is the presumption as to the integrity of the existing text. To rebut that presumption, any proposed change must be shown to be reasonable, necessary and to improve and strengthen the existing text. The second criterion is the need for any proposed change to conform with the principle of equality, the principle of non-discrimination, and the absolute prohibition of racial discrimination.

Since these criteria were first proposed on behalf of ATSIC by representatives such as Gatjil Djekurra, Mick Dodson and Geoff Clark, we have seen States propose changes which have obscured and weakened the clarity of the existing text. Changes have been advanced which have neither addressed nor met these fundamental criteria. In particular, we noted with grave concern the statement by the Australian Government at the 6th session concerning the "significant changes" needed to arrive at a document which can go forward. Such statements surely justify the very real fears of indigenous participants in relation to the apparent intensions of some States to dismember completely the existing Declaration.

Consider, for example, the retrograde bracketing of the term "indigenous peoples" at the insistence of only a few States. At the 1999 session of the Working Group, in response to such bracketing the indigenous caucus proposed an "Annex on the term indigenous peoples" for inclusion in the final report. That Annex set out in detail the position of indigenous peoples' representatives in relation to the term "indigenous peoples". Many examples of international legal usage of the terms "indigenous peoples" and "Aboriginal peoples" in the practice of States. The arguments raised in the Annex have met no response from those States whose objections to "indigenous peoples" are stymieing progress in consideration of the Declaration. For indigenous participants, this is a matter of fundamental importance to the integrity of this entire process. It is a matter in relation to which we can entertain no compromise, as this would be to deny our histories, cultures and aspirations, to deny legal, political, cultural and existential realities.

In the Working Group, indigenous representatives have sought to advance our arguments in defence of the Declaration in terms of international law and theory, and consistency with standards articulated in other instruments. State delegations have largely ignored

our analysis of international norms and practice. We have been especially disappointed by the failure of States to acknowledge the work of the UN's independent human rights treaty bodies, which is very relevant to our efforts to advance support for the Declaration.

In particular, in the Working Group's continuing dialogue on self-determination, we have urged State delegations to have regard to the jurisprudence of the human rights treaty bodies. It is accepted practice in these bodies to use the language of "indigenous peoples". It is now general practice in the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the bodies responsible for the two international human rights covenants, to inquire as to the enjoyment of indigenous peoples' right of self-determination. Similarly, at the Working Group's 5th session in 1999, the Chairman proposed that future debate on self-determination be based on three premises, including that "the universally accepted International Covenants, which contain the right to self-determination" be taken as a basis for future discussion. At the 6th session, Australia and other States opposed to language of self-determination apparently chose to ignore the Chairman's request. ATSIC considers the Chairman's proposal as appropriate and constructive. This approach provides a way forward consistent with established international human rights law and practice.

We are also troubled by States delegations' frequent references to domestic law and practice as constraining their approach to particular provisions of the Declaration. We urge States not to be limited by domestic constitutions, legislation or policy. Such an approach conflicts with the purpose of international human rights standard-setting. For example, ATSIC considers the proposed reference in article 12 to "conformity with domestic laws" to represent an unacceptable weakening of the current text. The Declaration must not be allowed to become an instrument to protect the status quo in States. Rather, it must be accepted as containing minimum international standards with which domestic laws must be brought into conformity.

ATSIC supports the call by the Saami Council and the Inuit Circumpolar Conference to consider different approaches in international practice to the concept of consensus. We suggest that the impasse might be overcome if the Chairperson were to invite those States who feel compelled to dissent from the general trend to note their reservations, but not block the consensus needed to move forward with the adoption of particular provisions of the Declaration. In particular, we urge those few States who oppose use of the term indigenous peoples to reflect upon the destabilising effect that their intransigence is having on confidence-building and progress.

We are particularly concerned that the informal State drafting sessions appear to have become institutionalised in the practice of the Working Group. As a result of their participation in such sessions, previously supportive States have shifted to accommodate the most intransigent of State participants. We have watched with dismay as discussion of articles has focussed upon the proposals produced by States in their informal consultations. We consider this to be a significant and unacceptable departure from the open dialogue and consensual working methods agreed upon at the earliest sessions of the Working Group. We note that when States' texts have been presented in plenary and

analysed by indigenous representatives, a significant number of State delegations have retreated to the position either that they could live with the original text, or that they regarded the original text as superior. This suggests that some States also are not comfortable with the trend to States' drafting sessions.

A related, disturbing aspect of the Working Group's more recent methods of work has been the manner in which States "discussion papers" have been presented to plenary. For example, at the most recent session the discussion paper on article 12 proposed a total of 25 changes to the current text. It was presented in English only. And, without any time for consultation and preparation, indigenous delegations were expected to analyse these 25 proposals, to measure them against the tests proposed, and to make interventions in response. This is not a process which ensures equal and effective participation by indigenous delegations.

During the course of the 6th session, numerous indigenous delegations inquired as to the Chairman's intentions once all States' proposed amendments have been tabled. No answer was forthcoming. Many indigenous delegations are increasingly reminded of the finalisation of the text of ILO Convention No 169, where States moved quickly to adopt a final text, with indigenous people reduced to the status of onlookers.

Finally, ATSIC reminds Members of the Commission that the Working Group is currently engaged in a first reading of the Declaration. The purpose of a first reading is to reach broad agreement on the language of provisions. At first reading, matters requiring review at a later stage are noted. The purpose of a second reading is to address matters identified at first reading for review at a later stage, and to consider any fine tuning said to be required as a result of the adoption, at first reading, of a draft text as a whole. In ATSIC's opinion, tangible progress could best be demonstrated by the Working Group's adoption, at first reading, of the Declaration's easier provisions, such as article 45. After six sessions, ATSIC is concerned that the consensual working methods previously agreed upon have broken down. We are concerned that in the absence of improved dialogue, we are further than ever from the understanding and consensus which are necessary if the Declaration is to be proclaimed by the General Assembly, and make any difference in the lives of indigenous peoples.

ATSIC does not believe that the UN can let the process of developing and adopting the Declaration on the Rights of Indigenous Peoples fail or be drawn out over many years. The gap in international human rights law in respect of indigenous rights demands resolution. The credibility of the UN human rights system and the integrity of the standard-setting processes are threatened by the present impasse. The indigenous peoples of the world deserve and need better than this.

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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

Written statement* submitted by the Union Internationale des Avocats (International Association of Lawyers), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2001]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.01-10556 (E)

"Human rights defenders: the lawyers' case"

1. The International Association of Lawyers (UIA), which was founded in 1927, is made up of more than 300 bars and associations representing almost 2 million lawyers, as well as thousands of individual members.

As an association working for the defence and future of the legal profession in its national and international environment, the UIA attaches particular importance to the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" adopted by the General Assembly on 9 December 1998, and to the mission of the Special Representative in charge of monitoring the situation of human rights defenders.

2. In the preamble to the Declaration, known as the "Declaration on Human Rights Defenders", these are described as individuals who, acting alone or in association with others, contribute to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.

The Declaration confirms in particular that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels (art. 1).

Article 9 of the Declaration further states that, "in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights". To this end, "everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay".

The same article recognizes everyone's right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms (para. 3 (c)).

Everyone's right to the lawful exercise of his or her occupation or profession is then confirmed, as is the duty of everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others to respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics (art. 11).

3. It may be noted that the main duties of the Special Representative who will report on the situation of human rights defenders in all parts of the world and on the means available for strengthening their protection in conformity with the Declaration are to receive and examine information related to the rights of human rights defenders, which should be transmitted in the first place by States members, and to cooperate with the latter on implementing the Declaration.

Effective cooperation mechanisms should also be instituted with organizations specializing in this field of work.

4. The UIA welcomes the establishment of these international instruments insofar as human rights defenders are very often in fact the first victims of violations of these rights by government officials or by the agents of non-governmental bodies. They are exposed to threats, to various forms of persecution, and to attempts on their lives and their security.

On account of their special status, however, they are also exposed to more indirect and more insidious forms of violence, such as social exclusion due to the connection in the authorities' minds between the defence of human rights and criminal activities such as terrorism or treason. Human rights activities are placed outside the law by a variety of legal restrictions, such as on the right to meet and assemble, to information and to freedom of movement. Other common forms of persecution include loss of employment and denial of access to medical care or education.

5. Among human rights defenders, lawyers are particularly exposed to the most insidious forms of persecution. Even when they are not severely affected in their physical integrity and freedom, they are frequently exposed to measures designed to prevent them from freely exercising their profession.

There is one international instrument which has no binding effect but which may be considered to express customary principles with regard to applying universally recognized human rights to lawyers. This is the "Basic Principles on the Role of Lawyers", which was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and which sets out guarantees to which lawyers are entitled in performing their professional functions.

The Basic Principles refer to the lawyers' duty to uphold human rights and fundamental freedoms recognized by national and international law.

One of the most important principles is that lawyers should be guaranteed the right to the authorities' protection whenever their security is threatened as a result of discharging their functions. They should in no event be identified with their clients or their clients' causes and must not on that account be prevented from discharging their functions.

6. The UIA, one of whose objectives is to promote and defend the interests of lawyers and the exercise of their profession as defenders of the rights of citizens, has always advocated respect for the rights of legal defence and human rights whenever it has had the opportunity to do so.

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Item 12 of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

Written statement*/ submitted by the Federation of Cuban Women,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2001]

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*/ This written statement is issued, unedited, as received in English, French and Spanish from the submitting non-governmental organization(s).

GE. *200101056 0*
ENG

In Cuba, the radical transformations in the condition of women and their rights are closely linked to the development of a new social project that began in 1959 with the triumph of the Revolution. Since then, a new renovated thought about women and about their insertion in the economic, political and social life of the country is portrayed and consolidates not only at Government level but in the society at large. This ideology is translated in a political will that takes form in concrete actions which favor women, in spite of the existing privations and scarcity of financial and material resources, in a context of a country submitted by the United States to a harsh and unjustified economic, commercial and financial blockade, which not only violates international law, but constitutes the greatest violation of the human rights of the people in general and of women in particular.

Another feature which distinguishes the work done in the sphere of women's human rights is the conjugation of the need to give them participation, with the principle of working for social justice, since women were perceived as a sector of the population that needed to be redeemed because they were victims of discrimination. It was not a matter of mobilizing them with a sense of usefulness, as an alternative human resource, but it had to do with taking them into account in response to their immediate and specific interests.

The work that is being carried out in the area of women's human rights, not free from difficulties and contradictions, is besides based in the conviction that not only with the taking over of political power, nor with socio-economic development you can obtain the full integration and social equality of women. It also needs a sustained and arduous parallel work in the educational, cultural, political and ideological arena in order to slowly do away with ideological, cultural and psychological barriers and stereotypes which do not only exist in the society, but also in the family where the reconceptualization of roles is also necessary. This is a struggle where women play a protagonist role but which encompasses and should involve the entire society.

The Federation of Cuban Women was founded in 1960 as a reflection of the interest of the women to have their own space through which they could channel their own demands and concerns and their disposition to participate in the radical changes that were taking place in the country. During the years, it became a mass organization which is comprised of women of all the sectors of the society, from whatever race or creed, and jointly work for the defense of women's human rights and in the development of the socialist project which they perceive as a strategic objective.

The Federation of Cuban Women view as a great attainment the consensus reached in the Declaration and Program of Action of Vienna adopted in the II UN World Conference on Human Rights, which was a historical turning point on the issue of women's human rights and fully identifies with the acknowledgement of the universal, indivisible, interdependent and interrelated character of the social, cultural, civil and political rights, including the right to development.

It acts nationally as the national mechanism for the advancement of women of compulsory reference for the Government, when it is going to design policies and programs for women, and in the formulation of legislative proposals which protect their rights. In this sense, it takes actions and, as an example, the National Seminar Cuban Women from Beijing to the Year 2000, that took place in Havana in 1996, should be highlighted. It was sponsored by the organization and the Government to undergo an analysis and evaluation of the agreements adopted in the IV World Conference of Women with the objective of implementing them, according to the Cuban reality.

The debates of the seminar were centered on the fundamental human rights of the Cuban women and it had a wide participation of specialists, experts, ministers, vice-ministers, women leaders and representatives of Cuban NGOs which enabled the socialization of problems and recommendations to empower, even more, the advancement of women. The following reflections where made on : How much has been attained ? What is lacking ? What strategy should be outlined for the betterment of the governmental policy on women ?

Out of this experience recommendations emerged which were taken into consideration as a base for what would later become the National Plan of Action of the Republic of Cuba to Follow-up Beijing, which came into force as a law, the 5th of May of 1997.

Later on, in 1999 the Federation of Cuban Women and the Executive Committee of the Council of Ministers convened again a National Seminar of Evaluation of the National Plan of Action, in which its fulfillment was analyzed and where the responsables of each attainment or difficulty, in the concrete development of women, where identified. New recommendations were dictaminated for the nimblying of the implementation of the Plan.

The women of Cuba have the privilege of living in a country whose Government was the first to sign the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the second to ratify it. A country which periodically fulfills this international obligation giving its pertinent reports with detailed information of the achievements and obstacles which still remain to eradicate. This does not only speak of the political will of changing the state of things, but it also enhances the country when the Committee of Experts itself in their final observations to the Government in the IV Report presented in June 2000, acknowledges the work carried out in Cuba for the attainment of equality between the sexes in spite of being a country pressured under the economic blockade " which has serious repercussions in the situation of women and children and has led to the deterioration of the quality of life of the people"...

These actions are coherent with the plans, programs and national measures oriented towards the advancement of women as part of a project of social equity. Hence, the Cuban policy of promotion of this sector of the population is not the result of events and campaigns that come from abroad, but stemming from its own dynamic, it links with the aspirations that the women's and feminist movement embrace at international level.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Robert F. Kennedy Memorial, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. *200-0-0540*

ENG

1. The Robert F. Kennedy Memorial appreciates the work undertaken by this Commission toward the elimination of racism, racial discrimination, xenophobia and all forms of discrimination. The Memorial also expresses its deep appreciation for the leadership of the High Commissioner for Human Rights, who has endeavored to highlight this issue in many international fora. Through its domestic and international programs, the Robert F. Kennedy Memorial has consistently worked to eliminate discriminatory policies and to promote equal opportunities for all persons. This year, in preparation for the upcoming U.N. World Conference Against Racism, Racial Discrimination, Xenophobia, and Other Forms of Related Intolerance, the Robert F. Kennedy Memorial is working with the National Campaign for Dalit Human Rights in India to ensure that caste or descent based discrimination is addressed in the Conference Plan of Action.

2. It is appropriate and important to address the issue of caste based discrimination under this agenda item. The Committee on the Elimination of Racial Discrimination has affirmed that "the situation of Scheduled Castes and Scheduled Tribes falls within the scope of the Convention [on the Elimination of All Forms of Racial Discrimination]."[1] In its comments, the Committee clearly stated that the term "descent" contained in Article 1 of the Convention does not refer solely to race but encompasses the situation of scheduled castes and tribes. Similar conclusions were drawn by the U.N. Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance in his January 1999 report.

3. The issue of caste based discrimination affects 240 million Dalits across the South Asia region. Although discrimination against Dalits under the caste system – a social system that has religious sanction – began three thousand years ago, it continues today despite steps taken by state governments to address the problem. For example, in India the national constitution abolishes the practice of "untouchability" against the Dalits. However, the ongoing discrimination against the Dalits has been recognized by India's National Parliament, by its judiciary, and by several constitutional bodies including the National Commission on Human Rights, the National Commission on Scheduled Castes and Scheduled Tribes, and the National Commission on Safai Karmacharies (or Sanitation Workers).

4. Although discrimination against Dalits occurs in several places across South Asia, in this written intervention the Robert F. Kennedy Memorial will focus on the experience of the Dalits in India. Discrimination against Dalits takes many different forms including segregated housing, discrimination in types of work and in wages, unequal access to education, and violence.

5. Under both Constitutional measures and more recent legislation, Dalits are accorded special protections and guaranteed rights as equal citizens under Indian law. Despite these legal measures, whenever Dalits have tried to assert their rights they have met with violence,

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[1] Cited from paragraph 14 of the *Concluding observations of the Committee on the Elimination of Racial Discrimination : India. 17/09/96.* CERD/C/304/Add.13.

including mass murders, rape, arson and destruction of property. The following table provides a picture of recent crimes committed against Dalits in India. The data was provided by the Home Ministry and reported by the National Commission on Scheduled Castes and Scheduled Tribes.

Cases registered with the police of crimes and atrocities against Dalits

Nature of crime	1995	1996	1997	Total
Murder	571	543	503	1,617
Injuries	4,544	4,585	3,462	12,591
Rape	873	949	1,002	2,824
Kidnapping & abduction	276	281	242	799
Robbery	218	213	157	588
Arson	500	464	384	1,348
Other Offences	10,492	13,278	11,693	35,463
Total	17,474	20,313	17,443	55,230

It should be noted that various independent research studies conducted both by the government and by non-governmental agencies demonstrate that there is a significant under-reporting of these crimes by the state agency itself.

6. Across India in both cities and rural areas, Dalits live in segregated housing colonies. In villages, they are usually located either at the beginning or at the end of the village. Dalits are expected to live in the designated area regardless of their education, employment, or economic status.

7. In the employment arena, there are documented incidents where Dalits have been attacked because they sought work opportunities in villages outside their own. Social norms also dictate that certain functions such as maintaining burial grounds or playing the drums for marriage ceremonies must be performed by Dalits.

8. It is significant to note that Dalit women suffer different human rights violations than Dalit men. Incidents of violence and rape against Dalit women are well-documented with perpetrators often being members of the upper caste or state agents such as the police. In addition, in many parts of India Dalit women are forced into prostitution under the system of "Devadasi" which is sanctioned by religion.

9. In India, 50% of Dalit children cannot complete primary education, and the drop-out rate for the Dalit girl child is 64%. Most children are forced to abandon their education due to reasons of poverty but many also suffer discrimination at the hands of teachers and other students. Once out of school, Dalit children frequently join the labor force to contribute to their families' survival. Dalit children continue to be employed in hazardous work while paid very little income.

10. There is significant anecdotal evidence that the state lacks the political will to eliminate discrimination against Dalits. For example, many violent attacks against Dalits take place in the presence of police. Many of the economic programs enacted years ago to meet constitutional guarantees such as land reform have not yet been implemented. Finally, there are documented cases in which members of the judiciary have themselves admitted discrimination against Dalits in the judiciary process.

11. To address these many forms of discrimination against the Dalits, we call upon the government of India and all governments committed to ending caste discrimination within their countries to do the following:

- Implement existing domestic measures to combat caste-based discrimination, including legislative and constitutional measures addressing land reform, employment protections, universal education, agricultural labor wages, and religious tolerance for Dalits.

- Extend an invitation to the U.N. Special Rapporteur on Racism to investigate caste-based discrimination in their respective countries.

- Submit full and detailed information, including the number of complaints lodged and sentences passed, about the implementation in practice of the legal provisions prohibiting acts of racial discrimination in future periodic reports to the Committee on the Elimination of Racial Discrimination.

- Identify concrete steps toward the elimination of caste-based discrimination for the upcoming World Conference against Racism; commit to implementing all state obligations under the Conference Plan of Action.

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Items 6, 10 and 14(d) of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SPECIFIC GROUPS AND INDIVIDUALS: OTHER VULNERABLE GROUPS AND INDIVIDUALS

Written statement*/ submitted by the International Council of Aids Service Organizations, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200-0-0544*

ENG

With over 50 million people infected and 22 million people dead since the start of the pandemic, one new infection every 6 seconds and one death every 10 seconds in the year 2000, ICASO requests the Commission on Human Rights to urge Governments, UN agencies, non-governmental organizations, UN treaty bodies and inter-governmental organizations to combat HIV/AIDS-related discrimination, prejudice and stigma and to monitor and enforce HIV/AIDS-related human rights.

HIV/AIDS needs to be considered as an important issue to the Commission on Human rights, as the epidemic undermines the effective implementation of human rights, while the respect for human rights is the cornerstone of an effective rights-based response to the epidemic.

All human rights are universal, indivisible, interdependent and interrelated. Respect for all human rights in the context of HIV/AIDS is an integral part of an effective national response in every country. Prevention, treatment and care efforts will fail if infected and affected people cannot participate fully in the local or national response to the epidemic.

Ignorance, lack of knowledge, fear and denial have engendered severe and often disastrous consequences, denying people living with HIV/AIDS access to treatments, services and support, as well as making it hard for prevention work to take place. International human rights law looks to guarantee freedom from discrimination on many grounds including sex, race, language, religion, political opinion, birth or other status. In Resolutions 1995/44 and 1996/43, this Commission confirmed that "other status" is to be interpreted as incorporating health status, including HIV/AIDS. This means that discrimination against people living with HIV/AIDS – or those perceived to be at higher risk of infection – is legally prohibited. But still, discrimination, stigma and marginalization continue to be a problem all over the world.

ICASO recalls that in September 1996, an international consultation of experts convened by UNAIDS and the (then) Center for Human Rights drafted the International Guidelines on HIV/AIDS and Human Rights. The Guidelines, which were annexed to resolution 1997/33 of the Commission on Human Rights and welcomed by the Sub-Commission in resolution 1997/40, provide guidance for Member States, United Nations system and regional intergovernmental bodies, and non-governmental organizations on a comprehensive framework for policy and law reform to limit the spread of HIV and reduce the impact of HIV and AIDS. In resolution 1999/49, the Commission requested a further report on steps taken to promote and implement the Guidelines.

ICASO is a global network of non-governmental and community-based AIDS organizations across Asia and the Pacific, North and South America, the Caribbean, Africa and Europe.

ICASO requests the Commission on Human Rights to take further steps toward the implementation and continuing monitoring of the compliance of governments with the Guidelines.

Based on this, ICASO asks the Commission to provide a list of those governments who did not respond to the request from the Secretary-General requiring information on the actions taking to promote and implement the International Guidelines, and publish such list in diverse forums, like web pages, list-serves, etc.

In addition, ICASO requests the appointment of a new Special Rapporteur for HIV/AIDS and human rights.

ICASO calls on this Commission to take urgent measures to address all the human rights dimensions of this epidemic. This includes the civil, political, social, economical and cultural rights of the men, women and children living with HIV, the communities most affected, and activists, educators and human rights defenders working alongside them.

Specifically, ICASO ask the Commission to urge Governments to take particular action in three strategic areas:

The first strategic area is community involvement. From the onset of the AIDS pandemic, communities responded when there was no one else, often in the face of government denial. Community organizations have the knowledge and expertise to work effectively with those most at risk of HIV infection and vulnerable to AIDS. A strong community response is a key indicator of a successful national response. This priority is reflected in the United Nations International Guidelines on HIV/AIDS and Human Rights, which provide that "*States should provide political and financial support to ensure that community organizations are able to carry out their activities effectively.*"

However, few countries support local community action. For this reason, ICASO calls for increased international and national funding to be channeled directly to community organizations.

The second strategic area is access to treatment and care. Access to basic primary care needs to be assured at the local level. Finding the resources for improving infrastructures is an urgent priority. Medicines need to be made both affordable and available. Taxes on essential drugs should be eliminated. Guidelines need to be developed to ensure reliable and effective distribution mechanisms. All options for lowering the price of drugs need to be explored. Discussions around the difficult issues related to patent protection need to take into account the suffering we face as a human family.

The issue of access to treatment for HIV in developing countries is currently of great interest to NGOs, AIDS support groups, governments and those working in care and in health, and is increasingly an area of public debate. However, the differences between developed and developing countries are not new. For years, there has been inadequate access to treatment in the non-industrialized world for diseases including tuberculosis, and malaria. This is still the case today. Advances in health care in developed countries have had little effect on what is available to the developing world. To counter this inequality, for many years now, attention has been paid to areas such as essential drugs, infrastructures and service delivery, human rights and

appropriate health technologies. The HIV pandemic has served to sharpen the awareness of these disparities.

Much needs to be done. As a first step, ICASO calls for immediate, consistent, accurate and frequent reports on the status of treatment throughout the world. The United Nations system should lead the process of designing and monitoring these reports, in close consultation with community groups around the world.

The third strategic area is prevention, an area that includes research on microbicides and vaccines suitable for developing countries. Both microbicides and suitable vaccines are sorely under-funded areas of research. This is a product marketing failure that is costing us lives. For this reason, ICASO calls upon governments to greatly increase funding for research to ensure that we have accessible and effective microbicides and vaccines within a matter of years, not decades.

The consistent factor among these three themes – community involvement, care and treatment, and prevention – is the lack of adequate funding. AIDS is a global security issue. However, the world is not putting sufficient resources into the fight against AIDS. The wealthy industrialized countries must accept that without urgent and substantial transfers to countries and communities most in need, the coming decade will be marked by illness, death, homelessness, dislocation and upheaval in some regions greater than that ever experienced during all the wars of the last century combined.

ICASO urges the Commission to call on the Governments of the industrialized world to ensure a minimum of 20% of their development budgets go to directly to address HIV/AIDS prevention, treatment and care, and attention to the most vulnerable populations, such as men who have sex with men, women, injecting drug users, prisoners, etc.

After two decades of AIDS we now know what we are dealing with and what needs to be done. We are starting to glimpse the horror that awaits the human family if we fail to respond now with urgent and substantial transfers from the rich to the developing nations. The community sector has a proven track record in reversing the epidemic in many countries, and is a willing partner of governments and the international community in tackling the epidemic in countries most affected. But we need your assistance to do so, both in acknowledging the community sector role in program development and implementation, and in providing the financial means to make it happen.

ICASO requests the Commission on Human Rights to ensure this message is heard at the Special Session of the United Nations General Assembly on HIV/AIDS in June, 2001

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Fifty-seventh session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Written statement*/ submitted by the Shimin Gaikou Centre (Citizens' Diplomatic Centre for the Rights of Indigenous Peoples), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200*0*0548*

ENG

1) Introduction

The preamble and first article of the Charter of the United Nations establish the close relationship between human rights and security. We believe that, as the international community surveys the twenty-first century, the time to make this relationship much clearer is at hand. The upcoming World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides us with a critical opportunity to do so. Among the most pressing concerns is that human rights are sacrificed under the rubric of security. In the course of establishing a "New World Order". It is imperative that the international community reexamines security policies in light of the potential for human rights violations, including differential and unfair treatment on the basis of ethnicity. Such reexamination should address the problem of ethnic discrimination underlying decisions regarding military base construction and military training exercises. This problem is particularly relevant in the case of indigenous peoples, for whom human rights are intrinsically related to land rights. The case of indigenous peoples embodies not only ethnic discrimination but also the perpetuation of colonialism - the elimination of which deserves the fullest attention of the international community.

2) A Selected Background

The behemoth United States military bases that now carpet the Hawaiian landscape exemplify the problem outlined above. Their existence was assured in the overthrow of the Kingdom of Hawaii by the United States in 1893, which culminated in the illegal annexation of the Hawaiian islands in 1898. Similarly, in direct violation of Article 51 of the Vienna Convention on the Law of Treaties, the Japanese government built its first military installation in Okinawa in 1876, during the course of the Ryukyu annexation (1872-1879). Through extensive land appropriation and forced labor of the Okinawans, Japan's military expansion throughout the Ryukyu islands continued until the end of World War Two. Moreover, following its land offensive on Okinawa in 1945, the US military continued the confiscation of residential land and destruction of cultural property for the purpose of constructing its own military bases. These actions were in clear violation of Articles 46 and 56 of the 1907 Regulations Relative to the Laws and Customs of War on Land (widely known as the "1907 Hague Regulations"). The US maintains its military installations on Okinawa, despite the reversion of the official administration of Okinawa to Japan in 1972. The fact that, at present, fully 75% of all US military bases and facilities in Japan are located in Okinawa, which constitutes only 0.6% of Japanese territory, is evidence that these security policies are ethnically discriminatory.

The 1990s were witness to burgeoning opposition to the ethnic discrimination surrounding military bases and military training exercises. Principled chiefly on decolonization and the elimination of discriminatory policies, anti-base movements calling for the protection of indigenous and human rights in general continue to unfold around the world. In response to the demands from the Chamorro people, for example, the government of Guam established a Commission on Decolonization to support the movement. In

Canada's province of Quebec, the Innu continue to protest air force training by NATO in the airspace over their sacred land. In British Indian Ocean Territory, the Chagos Islanders are protesting against their forced relocation for the sole purpose of military base construction. Back in Japan, the Okinawans expressed their opposition to the military installations and training sites on their ancestral land in public referendums, further engendering the campaign for base removal.

3) Recommendations

We offer the following topics for debate at the 2001 World Conference Against Racism:

1. The formal agenda should include: The Relationship Between Ethnic Discrimination and Military Land Use, and Ethnic Discrimination and the Unresolved Issue of Decolonization.

2. The Declaration to be adopted at the conference should emphasize the following principle as an article: Human rights shall not be jeopardized in the name of state security issues. In particular, any construction of military facilities or military training sites that exhibits ethnic discrimination shall not be upheld as a necessity unless it entails people's security based upon the protection of human rights.

3. The Programme of Action to be adopted in conjunction with the conference Declaration should contain the following articles:

a. States shall carry out a formal inquiry into whether ethnic discrimination underlies their decisions regarding the construction of military bases and training sites. States are to submit their findings to the Secretary General of the United Nations by June 2002.

b. The Secretary General of the United Nations shall, after also taking into full consideration information provided by indigenous peoples' organizations and non-governmental organizations, submit a comprehensive report on the States' findings to the United Nations General Assembly by December 2002.

c. In cases where ethnic discrimination is found to be a factor in the construction of bases and training sites, States are obligated to recognize this in a formal apology and to expedite the removal of bases, the return of all relevant land, the provision of fair compensation and complete environmental restoration.

d. The United Nations General Assembly shall take the necessary steps to ensure the implementation of this Declaration, including granting the General Assembly's Special Committee on Decolonization with the authority to accept and deliberate all necessary information, as provided for in the Declaration on the Granting of Independence to Colonial Countries and Peoples and Article 1 of both the International Covenant on Civil and

Political Rights and the International Covenant on Economic, Social and Cultural Rights.

e. States shall make annual reports to the General Assembly's Special Committee on Decolonization regarding the progress of base removal and return of land. The Special Committee's deliberation of these reports shall take into full consideration information submitted by indigenous peoples' organizations and non-governmental organizations, and shall include the participation, as equal observers, of representatives from relevant states, indigenous groups and non-governmental organizations. The results from these deliberations shall be submitted to the United Nations General Assembly for examination.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement*/ submitted by Canadian Voice of Women for Peace,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.*200'0'0552*

ENG

Greetings to all the members of the Human Rights Commission.
Our organization has followed the events in Iraq since before the outbreak of war when one of our members joined an international team of women to work with the Iraqi Federation of Women on a peace plan that would have averted the war. We have made a number of trips back to assess the damage of the war and the effects of sanctions on the Iraqi population. Our last trip to Baghdad was in November, 2000, when we joined a group of 100 peace and human rights activists on an Olympic plane from Greece in protest to the sanctions.

There is no doubt that sanctions have inflicted much greater harm than the destruction caused by the 1991 war. The policy to impose sanctions has destroyed the human rights of a total population and, according to Denis Halliday, former coordinator of the UN Humanitarian Program in Iraq, satisfies the definition of genocide: a deliberate policy that has effectively killed well over a million individuals, children and women primarily.

It is difficult to know where to start in describing the situation. Although food and medicine are exempt from the sanctions, the limited income does not allow Iraq to make the necessary imports of food and medicine, resulting in thousands of deaths caused by illnesses, which, under normal circumstances, would have been treated. Maternal mortality rates have more than doubled during the period of sanctions and 70% of women suffer from anemia.

Most tragic is what has happened to the children. According to UNICEF and Red Cross statistics, 600,000 children under five years of age have died during this period, and as of today, 6,000 children are dying each month from starvation and illness û again due to lack of food and medicine.

There is a five-fold increase in cancer rates, and childhood leukemia is the highest in the world, the result according to many scientific experts of the approximately 800 tons of depleted uranium contained in ammunition used during the Gulf War.

To call the Iraq situation "suffering" is to put it mildly. What was once a progressive, emerging middle-class society, in one decade has become an impoverished and desperate citizenry. Immediately after the Gulf War, hard-pressed Iraqis began to seek new ways and means to simply feed their families. Children were pulled from schools to help sell on the streets. In order to raise money for survival, many began selling family heirlooms and prized furniture. The child's right to go to school and get an education has been abolished under the present conditions of life. As unemployment soared, the social fabric of the society began to break down, and a phenomenon hitherto unknown in Iraq "prostitution" became prevalent as women sought a source of income.

Those of us who live in other countries demand certain values for ourselves, and insist on upholding the Universal Declaration of Human Rights. We support human rights, transparency and accountability for other people because these are the values we demand for ourselves. We consider the international community is responsible for allowing such a flagrant violation of human rights to happen in Iraq. We hope to lay our case before the Human Rights Commission and make a case for strong action by this body.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. * 2 0 0 - 0 - 0 6 9 4 *

ENG

Caste-based Discrimination in South Asia

1. Caste is an entrenched form of discrimination still practiced widely throughout South Asia. From an Indian progenitor, caste systems spread and perpetuated a form of human degradation with few parallels. In essence, caste discrimination limits one's employment to ancestral calling and prohibits inter-marriage, permanently and absolutely dividing social strata. In practice, discrimination is extended to all aspects of life; its physical and psychological effects on "untouchables" and "lower" castes constitute gross human rights abuse. Caste discrimination is absolute, as it nullifies social mobility. It is also a political ideology; a means of violently oppressive social control by which the largest sections of society are denied their basic rights to free speech, assembly and participation. It not merely denies equality but considers inequality ideal. Caste discrimination violates all human rights norms on which United Nations instruments are founded, as enshrined in the preamble to the Universal Declaration of Human Rights, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Under the influence of caste, humane treatment of all people is impossible.

2. Though in many respects caste discrimination is worse than slavery and apartheid, the international community has not taken any significant position against it. The Commission is obliged to address caste via the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, just as previous international fora have addressed apartheid and slavery. For many millions suffering in South Asia, the Conference will be a failure if the caste system is not adequately held to account.

3. The Asian Legal Resource Centre appreciates the comments on caste made by the Special Rapporteur on Contemporary Forms of Racism in his January 1999 report (E/CN.4/1999/15); the recommendations on themes of the World Conference outlined in the Bellagio Consultation document (A/CONF.189/PC.1/10); and the recent written statement submitted by the World Council of Churches (E/CN.4/2000/NGO/102) on the current situation of Indian Dalits. The Asian Legal Resource Centre also welcomes the resolution on "Elimination of Racial Discrimination" at the 52nd session of the Sub-commission on the Promotion and Protection of Human Rights, held from 31 July to 18 August 2000, which declared that discrimination based on work and descent is prohibited by international human rights law. As caste discrimination is based on work and descent it is therefore prohibited by international human rights law.

4. Inhuman treatment of a vast South Asian population, including people in Sri Lanka, Nepal and Bangladesh, has been justified on the basis of caste. But by far the largest number of people suffering its extremes are in India. Presently, India's Dalits and other so-called "untouchables" constitute around 17% of the population. Along with other "minority" groups, including tribal peoples, Sikhs and Muslims, they constitute roughly 85% of Indians. To this day, the level of violence against Dalits and other lower castes is atrocious.

5. In 1936 the foremost Dalit leader, Dr. B.R. Ambedkar said, "My quarrel with Hindus and Hinduism is not over the imperfections of their social conduct. It is much more fundamental. It is over their ideals." Under the caste system, an ideal society is unequal. In every respect, caste rejects the notion of human equality and justifies discrimination on the basis of graded inequality. Principles of common good exist only within each caste group. The question of balancing interests between groups does not exist, for the simple reason that each caste is a world unto itself. Caste

prevents the possibility of associated living among people; it is the most extreme division of social and political power. Its enclosure is complete, to the extent that direct contact between castes is prohibited, in order to avoid "pollution". It means total segregation, whether in temples, at wells, on roads, in schools and in marriage. Thus, while caste discrimination bears some similarity to that of slavery, it is in many respects more dehumanizing. The very term "untouchable" means one with whom no social contact of any sort should be held, under threat of punishment. It degrades beyond all comparison.

6. In this century, some constitutional and legal provisions have been enacted in several countries to negate the influence of caste, however these legal measures have failed to significantly impact the caste structure and influence social dynamics. Some laws, such as those prohibiting atrocities against Dalits, have not been implemented. Claims that these legal provisions are evidence of the eradication of caste are untrue, as extreme forms of discrimination are perpetrated on hundreds of millions of people every day. The Constitution of India, for example, accepts the principles of equality, fraternity and liberty; it outlawed all enclosed units by implication. However between this legal position and reality lies a vast gap. Despite legal safe guards, official Indian figures show that caste crimes against 'untouchables' average over 10,000 a year; the world's largest democracy has failed to develop beyond a mere formal democracy. No amount of criticism about the conflict between constitutional principles and practice can be of any impact on ethical principles and practices based on the opposite ideal. Ethically, there is unity of theory and practice, as inequality is accepted both as ideal and is practiced. Legal confusions have no bearing on the ethical foundation of caste-based societies. Constitutional declarations of equality or acceptance of international covenants founded on the principle of equality may create legal obligations, nonetheless they do not change the ethical foundations of a given society.

7. Caste lies behind many social crises in South Asia. Caste society does not recognize the right to dissent as a valid ethical principle. The right to expression is based on recognition of human equality. To deny the right to dissent is to deny the right to freedom of expression, and further, to regard expression of opinion as futile activity. Caste boundaries are fixed; no change can be brought about by any expression of opinion.

8. Caste society has no absolute prohibition of torture. The caste system can be maintained only through indifference to cruelty. Cruel treatment of lower castes, such as in preventing them from drinking water out of the same wells as upper castes, is normalized. Under the rules of pollution and purification, those breaking with such unjust practices commit a wrong.

9. The lack of agreement on ethical principles against cruelty has a direct bearing on such practices as extra-judicial killings, disappearances, forced confessions and other human rights abuses. In South Asia these are now regarded as legally wrong, however morally they are not widely condemned. An underlying culture of impunity remains fundamentally unchallenged; there is little outrage.

10. The number of persons who to some degree have broken intellectually from the grip of caste has increased to millions. The consciousness of vast masses has begun to change. Modern pressures, such as increased interaction through travel and communications, make many practices of pollution and purification hard to maintain; open and conscious defiance more difficult to prevent. The conflict of inner rejection and outer compliance gives rise to many forms of hypocrisy and cynicism. Thus, willingness to accept equality as the ethical foundation of society has grown among many. In response, upper castes try to re-invent themselves in new forms, and develop

many more subtle ways to keep their system alive. Repression of those who reject caste is much more intense and violent. There are even movements working towards withdrawal of constitutional guarantees of equality and the various kinds of affirmative action provided to improve conditions for Dalits and lower castes.

11. However these days, when democratic jargon is widely used, sometimes there is no way that discrimination can be openly justified. That caste hierarchy is no longer easily legitimised has in itself contributed to the emergence of a broadly acceptable public discourse about caste status coded as cultural difference. Because people cannot readily speak of castes as unequal, they describe them as "different". In this case, difference is another name for inequality. Thus, when for the sake of international relations the proponents of caste enter into dialogue accepting equality as the basis of discussion, they engage in such discourse only artificially. Their real position remains outside the discourse.

12. Claims to a "special religiosity" are also often made internationally by the South Asian caste elite in defence of their system. Yet what have passed as religious views in India are often mundane theories and rules of social control that have been deemed sacred by controlling agents. When caste discrimination was developed, religious and judicial notions followed to justify it. To make this purported special religiosity "Indian", the views of Dalits and lower caste Indians were excluded, and have been since.

13. Elitist claims that Dalit concerns are merely historical matters of backwardness and society's functional bases are equally fabrications that aim to perpetuate their subjugation of lower castes. The Special Rapporteur recognised caste as falling within the scope of Racial Discrimination and Related Intolerance in his January 1999 report (para. 100) and cited articles from the Indian Constitution and views of the Committee on the Elimination of Racial Discrimination in reaching this conclusion. The Bellagio Consultation likewise recognised caste as a form of racial discrimination and intolerance. Thus caste is categorically a concern for the World Conference.

14. Yet in terms of what the international community must do to eradicate discrimination, caste presents a difficult problem. The caste system is one in which doors to other castes are closed. To open the doors cannot be a decision of just one caste. It has to be a decision by consensus, because the breaking of caste boundaries involves an exit as well an entrance. While one caste may make a decision to exit from its boundaries, entering into boundaries held by others requires their consent. When the most socially and politically powerful castes want to remain enclosed, lower castes' decisions to break open can have little effect. Emancipation lies in destroying caste enclosure from all sides. The international community must help to achieve this by examination and exposure of the ethical foundations underpinning caste-based societies.

15. The Asian Legal Resource Centre therefore urges the Commission to:

    a. Reaffirm Article 1 of the Universal Declaration of Human Rights, that all persons are born free and equal in dignity and rights, and deplore all principles and practices rejecting the basic notion of universal human equality;

    b. Recognise all forms of caste discrimination as falling with the scope of the Conference, and explicitly equate caste with slavery and apartheid;

c. Pursue the recommendations of the Bellagio Consultation, particularly for the formulation of national plans of action against racism, which in the South Asian context must include elimination of caste; establishment of a United Nations inter-agency task force on racism and a semi-autonomous body to promote research and training on related issues; with assistance from the High Commissioner for Human Rights, creation of operational units within regional bodies to focus on combatting racism, which pertains specifically to the South Asian Association for Regional Cooperation (SAARC); and the establishment of a United Nations voluntary trust fund to give a platform to Dalits and lower castes;

d. Examine in particular the issue of Dalit women and children, who suffer the most extreme forms of caste discrimination and have the fewest avenues available for social advancement; and,

e. Establish specific indicators to monitor measures for the advancement of not only civil and political rights but also social, economic and cultural rights, targetting the elimination of caste-based discrimination. The existence of mere legal provisions should not be taken as a guarantee of protection for victims of caste systems. All areas of administrative practice and implementation need to be regularly reviewed.

f. Implement a set of standards, norms and guidelines must be developed to abolish existing discriminatory practices based on work and descent under international human rights law. The states concerned must be held responsible under international law for these violations in these countries.

16. The elimination of caste is a much-belated human rights concern. After a few thousand years of practice, gigantic efforts to break the system open have as yet failed. That discrimination so gross as caste has survived to this day is not only an indictment against the countries where the practice exists but also against the international community itself. Fifty years of United Nations' instruments are of no significance to the millions continuing to suffer this most perverse form of intolerance. In South Asia, little regard will be paid to the outcome of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance if it does not effectively address caste. The solution to caste discrimination does not lie in tolerance among castes; it demands nothing less than the elimination of caste itself. The Commission must facilitate effective international action towards that end.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. * 2 0 0 - 0 - 0 6 9 8 *

ENG

Discrimination against new immigrants from Mainland China in Hong Kong SAR

1. Every year there about 54,000 new immigrants from Mainland China arrive in Hong Kong, representing nearly one percent of its total population. The Hong Kong Special Administrative Region (HKSAR) Government has not yet introduced any new population or immigrant policy to guide this flow. Neither is there any social or economic policy to address the needs of these newcomers. The lack of affirmative action towards these new arrivals not only hinders their equal participation, but also contributes to the building of social tension in the community.

2. New immigrants have been made the scapegoats of incompetent government actions designed to improve the living standard of poor people during times of economic recession. They have been blamed for increasing the taxpayers' burden and competing for social resources with locals. Negative public opinion has become an excuse for the government to neglect the needs of new immigrants. Most new immigrants are women and children who come to Hong Kong for family reunions. The main source of their problems is unfair and discriminative social policies:

   a. Housing Policy: Hong Kong housing rentals are the third most expensive in the world. New immigrants are desperately in need of subsidised housing. They suffer great financial hardships and can only afford to live in old and dilapidated private tenements, usually sharing a unit with 8 to 10 other families or with dozens of other dwellers in a cage-home. These immigrant families can only pin their hopes for improved living conditions on public housing. However, the HKSAR Government applies a residence rule when allocating public housing that discriminates against new immigrant families. This rule stipulates that more than half of a household must have resided in Hong Kong for at least seven years before public housing will be allocated to them. As most new immigrant families cannot meet with this criterion, they have to wait for years in order to improve their living conditions.

   b. Education Policy: Despite a majority of new immigrants from Mainland China being of school-age, the government has not developed a comprehensive policy to help them to integrate into the Hong Kong education system and society. Many have difficulties in finding a place in schools and in adjusting to the new environment. Although education is supposed to be free and compulsory for every one in Hong Kong aged between 6 and 15, many immigrant children have been denied entry to local schools due to inadequate arrangements of the Education Department and discriminatory attitudes of the schools.

      For those above 15, the Education Department even refuses to provide any assistance in securing a school place. It only recommends young immigrants above 15 study at evening schools or take adult courses, although most of them are very keen to continue their education in the regular secondary schools. Many of them can only find placements in private schools or simply give up studies.

This is likely to create a self-fulfilling prophecy that new immigrants are of a lower education standard and cannot integrate into the society. But in fact this is an outcome of deficient social policies.

c. Social Welfare Policy: As Hong Kong's economy continues to be gloomy, many new immigrant families encounter economic difficulties, but are not entitled to apply for public assistance. As with housing and education policies, the newcomers are denied equal access to social security. To be eligible for public assistance, the applicant must have resided in Hong Kong for over a year. The policy keeps the needy new immigrants distant from the provision of social welfare and makes life difficult for elderly new arrivals and their families.

3. The HKSAR Government must take affirmative measures to remove these discriminatory treatments against new immigrants from Mainland China within their polices on education, housing, and social welfare.

4. The second major area of concern is the denial of the right of abode to Mainland-born children of Hong Kong permanent residents. Articles 24(2) and (3) of the Basic Law stipulate that Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR, and their children of Chinese nationality born outside Hong Kong, shall all be permanent residents. However, the HKSAR Government has deprived this right of abode for the Mainland-born children of Hong Kong permanent residents. At the change of sovereignty, the first few pieces of legislation passed by the Provisional Legislature of the HKSAR amended the Immigration Ordinance to make people residing in Mainland China a restricted category and the exercise of their rights a matter subject to control by the administration. The Immigration (Amendment) (No. 3) Ordinance requires that Mainland-born children who claim the right of abode must attach a valid Certificate of Entitlement to a one-way permit before they can settle in Hong Kong. However the Mainland authorities set a quota of 150 one-way permit entries per day. In other words, without getting one-way permits under this restrictive immigration scheme, these children cannot attain their right of abode in Hong Kong.

5. This newly enacted legislation clearly discriminates against the Mainland-born children of Hong Kong permanent residents. There is no quota limit for the children of Hong Kong permanent residents who are born outside Hong Kong and Mainland China. These children can enter Hong Kong using travel documents or passports issued by the country where the children are born. They are allowed to apply for the Certificate of Entitlement at the Hong Kong Immigration Department directly, either in Hong Kong or by mail, and can remain in Hong Kong while the Immigration Department verifies their application.

6. A series of litigation cases challenged the legality of these amendments. On January 29, 1999, the Court of Final Appeal (CFA) ruled that the amended ordinance requiring the Certificate of Entitlement to be attached to the one-way permit is unconstitutional and therefore null and void. However, the HKSAR Government

declared that the CFA judgment would lead to insoluble problems arising from a mass influx of immigrants from the Mainland. Instead of respecting and implementing the CFA's judgment, the HKSAR government, through Chief Executive Tung Chee-hwa, applied to the Standing Committee of the National People's Congress (NPCSC) of the People's Republic of China for a reinterpretation of articles 22(4) and 24(3) of the Basic Law. On June 26, 1999, the NPCSC obligingly reinterpreted the articles and thereby overturned the CFA's judgment, effectively reinstating the requirement that the Certificate of Entitlement be linked to the one-way permit and thus reinforcing discrimination against the Mainland-born children of Hong Kong permanent residents.

7. The NPCSC's decision to overturn the CFA's ruling has also jeopardised the independence of Hong Kong's judiciary. The HKSAR Government has refused to undertake not to seek future reinterpretations from the NPCSC as it did in this case. The Submission of the Hong Kong Bar Association on the First Report of the HKSAR to the Human Rights Committee observed, "The incident shows that the Government is prepared to succumb to political pressure... to resort to political process to reverse the judgement of the Court after it had lost its case in court. It will be a sad day if our judges have to look over their shoulders each time they make a controversial decision. It will be a blow to the rule of law if judges have to take into account political considerations in making their decisions."

8. The Asian Legal Resource Centre calls upon the Commission to encourage the HKSAR Government to remove those discriminatory policies against new immigrants from Mainland China and to assure citizens that it will not call on the NPCSC for future interpretations of the Basic Law.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE.*200*0*0702*

ENG

Health Care in Cambodia

1. The Committee on Economic, Social and Cultural Rights has observed that, "Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity" (E/C.12/2000/4). This statement is reinforced by article 25(1) of the Universal Declaration of Human Rights; article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 10 of the Declaration of Social Progress and Development and article 8 of the Declaration on the Right to Development.

2. According to the Maastricht Guidelines (1997) States are obliged to respect, protect and fulfil social, economic and cultural rights. These are delineated: "The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights… The obligation to protect requires States to prevent violations of such rights by third parties… The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights." The Guidelines state that, "Failure to perform any one of these three obligations constitutes a violation of such rights." Furthermore, "Violations of the Covenant [ICESCR] occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights […]. Thus, for example, a State party in which any significant number of individuals is deprived of … essential primary health care… is, prima facie, violating the Covenant.' Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties." The Guidelines conclude, "As a matter of international law, the state remains ultimately responsible for guaranteeing the realisation of these rights."

3. Article 72 of the Constitution of Cambodia (1993) adopts these international principles: "The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor citizens shall receive free medical consultation in public hospitals, infirmaries and maternities." Sadly, such guarantees mean little to people whose right to health is being violated daily. In spite of international efforts, the country has not yet recovered from the Pol Pot regime's tragic legacy.

4. A few indicators from the United Nations Development Programme's *Human Development Report 2000* highlight the status of Cambodian people's health: life expectancy at birth is 53.5 years; infant mortality is 104 per 1,000 live births and 163 per 1,000 live births for under age 5; maternal mortality is 470 per 100,000 live births. Additional figures from the 1998 report reveal that 40 percent of children under age 5 are underweight, 64 percent of the population is without access to safe water, 86 percent without access to sanitation and 47 percent without access to health services. The cumulative result, according to the 2000 report, is that 27.7 percent of the population is not expected to survive to age 40, and 46.6 percent is not expected to reach age 60.

5. In September 2000, the Asian Legal Resource Center conducted an investigation into Cambodia's health care system. It confirmed the poor state of the Cambodian people's health and found that this was due to a lack of funds, the poor quality of medical service, corruption and public distrust of doctors and hospitals.

6. The average salary of a Cambodian doctor in a public hospital is US$15-20 per month. Consequently, doctors in public hospitals refuse to see patients with no money, even in the emergency room. Medicine from donor countries that disappears from hospitals reappears in the black market.

7. Medical staff are unevenly distributed throughout the country. 87 percent of people live in the country's rural areas but only 14 percent of Cambodia's medical staff are based there. Some staff outside urban areas are illiterate or semi-literate. The lack of health care professionals in the countryside has implications for rural poverty. In Srey Santhor District, Kompong Cham Province, the Asian Legal Resource Centre found that among farming families who had lost their lands, in 44.6 percent of cases the loss was precipitated by illness preventing farmers from working their fields.

8. Denial of the Cambodian people's right to health is felt intensely in everyday life. The Asian Legal Resource Centre witnessed an accident, for example, involving a seriously injured motorbike taxi driver. When an ambulance arrived, the man refused to go to hospital because he had only 300 riels (US$ 0.08) in his pocket. Without enough money, he knew that he would only be sent home upon arrival, consequently he insisted on going home rather than to hospital. This incident was not unusual; while in the capital, the Asian Legal Resource Centre heard the following cases.

    a. A young woman reported that her friend fell off her motorbike and suffered concussion. Her friends took her to hospital, where they were instructed to register her for a fee. When they said that they didn't have money the staff turned their backs and the patient was abandoned. While they cried for help, the patient came to and a doctor said she would be all right. She went home and died that night after vomiting blood.

    b. A man in his early 50s testified that after a hand injury received while working on a construction site swelled and became discoloured he borrowed some money and went to a hospital. According to the man, "Soon after the doctor's examination, I was taken to the operating room. The doctor neither explained anything to me nor asked my permission; my hand was cut off at the wrist with an electric saw."

    c. The 30 month-old baby boy of one woman had a high fever. At the hospital staff asked whether she had money, whereupon she showed 500 riels (US$ 0.13). After some perfunctory questions she was told to give the money in exchange for some tablets, which she believes were asprin, and instructed to feed the baby three per day. Two days later the baby died.

    d. A young man working as a garbage collector in the central market explained that after his wife delivered their first baby she lost consciousness. Taking

her to hospital, he was told to pay 3,000 riels (US$0.77) and register at the reception desk. The man continued, "I only had 500 riels at that time and told them so. I was told to wait until someone called me. I was not called by anyone though, even after my wife died in the chair of the hospital waiting room."

9. These cases clearly illustrate widespread denial of the Cambodian people's right to health. With spending on health amounting to only 0.6 percent of Cambodia's gross domestic product, health care in the country is unlikely to improve in the near future. The Cambodian government is failing to meet its obligations to both protect and fulfil the right to health of its people. It is failing to prevent violations of people's right to health by doctors and other health care staff and is not taking legislative, administrative, budgetary, judicial or other measures to reverse the present situation. While lacking in financial resources, the Government of Cambodia could nevertheless begin by re-channelling spending from other areas, such as the 2.7 percent of gross domestic product used on defence, towards health care.

10. The international community also has a responsibility to ensure that the Government of Cambodia upholds the right to health. In addition to reminding the government of those obligations under the Constitution and the ICESCR, which it ratified in 1992, the international community can provide financial and technical assistance. Additional support would be a small price to pay. The United Nations' efforts to promote the civil and political rights of the Cambodian people during the past decade will otherwise be of little use to a people who are being killed and maimed by a system that is denying their right to health.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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ENG

Chaining and shackling of prisoners in Thailand

1. According to article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Further, article 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) determines that each State Party shall undertake to prevent – in any territory under its jurisdiction – acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.

2. In Thailand, the present practice of chaining and shackling of prisoners is tantamount to cruel, inhuman and degrading treatment, in violation of these norms, despite Thailand having acceded to the ICCPR. It also violates article 31 of Thailand's Constitution, which states that, "Torture or any kind of inhumane punishment is prohibited."

3. Anyone visiting the area at the court complex in Bangkok where the accused are kept while waiting for their cases to be heard can see how cruelly and animal-like they are treated. Despite being held in well-locked large cells, prisoners are shackled with iron chains and handcuffed to each other. Perhaps this chaining, shackling and handcuffing is a part of Thailand's past, when cultural practices permitted society to treat prisoners or accused as non-persons. But this practice does no credit to a country that is trying to emerge as a respected nation in the region. Thailand's recent industrial growth has allowed it to improve court complexes, courtrooms and facilities for judges and lawyers. However these significant improvements will attract little attention if the quality of justice is reduced to sheer disregard for basic standards of treating prisoners and accused.

4. In the Asian region, judges of some countries have intervened to correct the situation and lay down rules for more humane treatment of prisoners and accused. In many Asian states, prisoners cannot even be handcuffed except for special reason, such as past escape attempts or a violent history.

5. Although Thailand is going through a period of democratization and is trying to become a role model for Southeast Asia, it also has outstanding fundamental obligations to fulfill in meeting international human rights standards. It has not yet ratified the CAT. Article 10 of that Convention obliges state parties to ensure that education and information regarding the prohibition against degrading and inhuman treatment are fully included in the training of law enforcement personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Article 11 obliges

systematic reviews of methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.

6. While the Government of Thailand should ratify the CAT, above all it should implement the fundamental principles in the Convention through effective reforms and the type of education programmes obliged by the above articles. It should also ratify the two optional protocols of the ICCPR, enabling Thai citizens to seek redress from international authorities, such as the Human Rights Committee, in the event of human rights violations.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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ENG

Enforced and Involuntary Disappearances in Sri Lanka

1. Sri Lanka's disappearance cases are an outstanding issue of gross human rights abuse. The Government of Sri Lanka has clearly ignored international efforts to address this concern. The time has come for the establishment of an international tribunal or similar body to press the matter.

2. The Working Group on Enforced or Involuntary Disappearances made the following recommendations to the Government of Sri Lanka in its 21 December 1999 report (E/CN.4/2000/64/Add.1):

   (a) The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators;

   (b) The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the out-come of investigations by the police;

   (c) The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance;

   (d) The Prevention of Terrorism Act and the Emergency Regulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners;

   (e) Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved;

   (f) The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission;

(g) All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the confirmation as "proven" by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children;

(h) The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families;

(i) The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead;

(j) The Government should instruct the special unit in REPPIA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified.

3. To date, these recommendations have been completely ignored by the government. The Asian Legal Resource Centre considers that among them the most important recommendation is the first, that the government should establish an independent body to investigate all disappearances since 1995. Besides the huge numbers of disappearances in the late eighties, estimated by non-government organisations at around 60,000, the Sri Lankan National Human Rights Commission received 2130 new complaints of disappearances between April 1997 and March 1999 alone, out of which only 767 cases have been traced. Government-appointed commissions into disappearances have found that these crimes have been committed with full knowledge, planning and encouragement of the government. The excuse often given by the authorities, that they lack sufficient evidence to prosecute, is based on deliberate avoidance of criminal investigations into these cases. Their way to avoid prosecutions is to avoid investigations. The Asian Legal Resource Centre urges the Commission to pursue the first recommendation above all others, until it is implemented.

4. The Asian Legal Resource Centre has already called upon the Commission and international community to encourage the Government of Sri Lanka to establish an independent commission with foreign backing and participants, empowered to investigate and conduct trials on all disappearances (E/CN.4/2000/NGO/63, paragraphs 8 and 9). The Asian Legal Resource Centre has also orally called upon the Commission to facilitate the establishment of an international tribunal as the best alternative. The government's abject failure to adopt remedial measures, its role in the causing of these disappearances and the sheer volume of abuse amount in total to a

5. With a view to establishing an international tribunal or similar body, the Commission must first review the Government of Sri Lanka's performance on disappearances. The Asian Legal Resource Centre recommends a Special Rapporteur be appointed with a view to this end. Unless the Commission vigorously pursues remedies for disappearances in Sri Lanka through specific ongoing measures, the perpetrators of these crimes will enjoy impunity and continue to work in the nation's law enforcement agencies.

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Fifty-seventh session
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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement*/ submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. *200*0*0735*

ENG

Beatings of alleged criminals to death expose fatal flaws of the criminal justice system in Cambodia

1. Group killing of alleged criminals has become frequent practice in Cambodia. Pictures in newspapers publishing details of street executions clearly show policemen standing by while people attack and kill. These incidents are not accidental, but the product of a legal system that has proved itself incapable of dispensing justice objectively and a police force willing to incite violence as a rough substitute for the dispensation of legal justice.

2. When policing and judicial practices fail, street violence becomes a form of trial delivering an instant remedy to appease the appetites of people made insecure. Without recourse to legitimate remedies and with tacit approval of law enforcement agencies, people take to savage revenge. In Cambodia, none of those engaging in such killings have been arrested or brought to justice, even despite their photos being exhibited by the press.

3. A few cases from July to October 2000 serve to illustrate. On July 21, Song Veasna and Dy Hor were beaten to death and their corpses burned after alleged robbery of a motorcycle. On August 19, Rim Bros was taken from the police station at Sam Pov Loun district, Battambang, while he was under police custody for an alleged rape; his penis chopped off, he was beaten to death by a large mob armed with sticks and rocks. On September 15, Sna of Chankar Morn Section, Phnom Penh, was beaten to death at Dankor Market after attempting to escape from police, having been accused of theft of a gold watch. Alleged thieves of motorcycle taxis beaten to death on October 3-4 were Chea Pha, at Ang Snuol, along Highway 4 of Kandal province; Keng Kosal and Mun Nath at Trapeang Thloeung, Sangkat Chom Chau, Phnom Penh; and an unidentified person at Sangkat Boeng Keng Kong, Phnom Penh. For snatching a necklace, a student named Norng Darn was beaten to death on October 23 in front of You Nam Market, Kampuchea Krom Street, Phnom Penh. On October 27, another unidentified person was beaten to death at Street 219, Sangkat Sangkat Phsar Doeum Kor, Phnom Penh, for alleged theft of a bicycle.

4. These killings clearly violate article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." They also violate the right to fair trial enshrined in article 14 of the ICCPR. The Government of Cambodia has ratified the ICCPR and the Constitution explicitly upholds the ICCPR. Thus, these killings violate Cambodia's own fundamental law as well as its international obligations.

5. The Government of Cambodia is obliged to bring this practice to an end and punish all those who have engaged in it. As it has been legitimised through both the passive participation and instigation of the police, the government should explicitly prohibit gang killing via a pronouncement and a campaign to reinforce the message. The government must also appoint a commission to

inquire into these cases and scrutinise actions taken by the police to investigate and punish offenders.

6. These practices, however, are systemic; not the product of arbitrary mob violence or public outrage. They are rooted in the country's failure to develop a functioning criminal investigation system, without which there can be no fair trial. In the absence of criminal procedure, elements of the public are being encouraged to seek violent alternatives. A permanent solution can come only through legal and judicial reforms designed to make fair trial a possibility in Cambodia. Sadly, during the seven years since the UN sponsored elections progress in this direction has been slow, if at all.

7. Cambodia lacks a functioning criminal justice system because there is

   a. No penal code. The existing code consists of about forty offences drawn up as a guideline by the UN Transitional Authority on Cambodia (UNTAC). The Cambodian Ministry of Justice has been drafting an adequate code but it has not been produced, despite many claims that it is nearing completion. There seems little likelihood of a penal code being adopted in the near future.

   b. No basic criminal procedure code. One new draft has been circulating, but this has been based on the socialist justice model employed from 1984 to 1992, before UNTAC and adoption of the new Constitution. Differences of opinion about the criminal procedure code – whether the former system of socialist justice should continue or whether liberal democratic principles should be used as the norms, on the basis of the 1993 Constitution, which declares Cambodia a liberal democracy – have not been settled. For all practical purposes, the old socialist system continues, as most judges are products of the pre-UNTAC period.

   c. No professionally competent judiciary.

8. Without serious reforms, Cambodia will not be able to honour its obligations under the ICCPR. The situation will continue to degenerate, as more people are encouraged or permitted by law-enforcement agencies to engage in barbaric practices such as killings and other gross human rights abuses.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.01-10739

ENG

Freedom of assembly, the Public Order Ordinance and
academic freedom in Hong Kong SAR

1. On August 15, 2000, five university students in Hong Kong Special Administrative Region (Hong Kong SAR) of the People's Republic of China were arrested under the Public Order Ordinance legislation. They were accused of taking part in, and helping organise, an illegal assembly and obstructing police duties on June 26, 2000. On 28 September 2000, five university students were arrested for unauthorised assembly and for their part in a protest against tuition fees on April 20, 2000. Three of them were also among the five students arrested in the former case.

2. The arrests of these students aroused widespread public concern. Many local human rights organizations, the Hong Kong Bar Association and scholars made statements against the arrests and questioned whether they were a politically motivated attempt to target people protesting against the government. They expressed concern over the use of the Public Order Ordinance to suppress dissent. They pointed out that the Public Order Ordinance is a violation of freedom of assembly and should be amended.

3. The provisional legislature amended the Public Order Ordinance in the middle of the night, several hours after power was transferred from the British colonial administration to the SAR Government of China in 1997. This law is extremely important in ensuring people's freedom of expression and assembly. Its rapid change gave the impression that the desire and intent of the incoming administration was to alter the Public Order Ordinance to use in control of demonstrations, rallies, and organisations that it feels might be politically threatening.

4. The amendments to the Public Order Ordinance mean that:

   a. Organizers of demonstrations with more than 30 persons are required to obtain a "notification of no objection" from the police at least seven days before a demonstration. This notice requirement is very harsh, although police may exercise discretionary power. In effect, it is an indirect permit system, although the government denies this. It empowers the police to reject an application on national security grounds. Under the guidelines, the subject matter of a demonstration – for example, whether it advocates independence for Tibet or Taiwan – can be taken into account. Thus, political conviction, rather than conduct, is made grounds for limits to the freedom of expression.

   b. Police have a wide range of powers to impose conditions on and stop demonstrations. Article 15(2) states that, "The Commissioner of Police may, where he reasonably considers it necessary in the interests of national security or public safety, public order or for the protection of the rights and freedoms of others, impose conditions in respect of any public procession notified..." Though most demonstrations have been allowed to proceed, they have experienced

excessive policing. Demonstrators have often been restricted to "designated demonstration areas", out of sight and hearing ranges of their targets, behind heavily guarded barricades. Demonstrators usually find this unacceptable, which has often resulted in conflict, arrest and prosecution.

c. The maximum penalty for failure to notify the police of a demonstration or rally is five years imprisonment. This is too harsh for an offense that should be decriminalised. Such an excessive penalty goes against all internationally accepted practices. It cannot be emphasised enough that there should be no prison sentence for such an infraction: the only "crime" is failure to get permission from the police to exercise one's freedom of expression and assembly.

5. Although the Department of Justice finally gave in to public pressure and decided not to prosecute the students charged under the Public Order Ordinance, the legislation in its present form denies people the right to express themselves and peacefully assemble. It transforms this right into a privilege granted by the police. The requirement to notify the police of a demonstration or rally must be separated from the giving to police the power to approve or disapprove of people's right to express their views.

6. A second area of concern for freedom of expression in Hong Kong SAR is threats to academic freedom by political agents. On July 7, 2000, Dr. Robert Chung Ting-yiu, Director of the Public Opinion Programme of the Journalism and Media Studies Centre at Hong Kong University (HKU), claimed that he had been politically pressured by Chief Executive Tung Chee-hwa, through a "special channel", to discontinue public opinion polls on Tung's popularity and the Hong Kong government's credibility. A week later Chung revealed that the "special channel" was the head of the university, Vice Chancellor Cheng Yiu-chung, and his deputy, Pro Vice Chancellor Wong Siu-lun. Although the two HKU administrators quickly denied the allegations, controversy immediately erupted over questions of government interference in the work of academics. As a result, the university set up a three-member panel to investigate Chung's claims. In August, the panel heard that Andrew Lo Cheung-on, a senior special assistant to the chief executive, had met with Vice Chancellor Cheng to discuss Dr. Chung's public opinion polls. Later Professor Wong met twice with Dr. Chung, and allegedly pressured him to stop the polls.

7. The panel report of September 1 stated that they found Robert Chung to be "an honest witness who was telling the truth in relation to the matters he is complaining about." However, the panel found the chief executive's senior special assistant to be a "poor and untruthful witness" and that neither he nor the vice chancellor "disclosed the full and truthful extent of what was said in [their] meeting..." They argued, "It is this failure to have open discussion through recognised channels that weighs heavily with the panel when considering whether these were illicit endeavours to silence Dr. Chung because of political considerations. We have no doubt that political consideration was the principal reason that motivated the [meetings]." The vice chancellor and his deputy resigned just before the university council met to vote on

whether or not to accept the panel's report. But because of Chief Executive Tung's refusal to testify and the lack of credibility attributed to Lo by the panel, questions remain unanswered about their roles.

8. Naturally, this episode has evoked concerns about academic freedom as well as guarantees to freedom of speech in Hong Kong three years after its sovereignty was transferred to China. Do academics, for instance, have the space to conduct opinion polls about the government and its leader? Is a mechanism for gauging the views of the people of Hong Kong, of feeling the pulse of the community, being restrained? Is an avenue for expressing one's views being suppressed? Most worrisome is that features of Mainland China's political culture are perhaps being imported, consciously or unconsciously, by Hong Kong's officials: a political culture built on suffocating control of dissent, giving the false appearance of political stability and consensus.

9. The Asian Legal Resource Centre calls upon the Commission to encourage the HKSAR Government to amend the Public Order Ordinance such that a notice of no objection from the police be no longer required before holding a public demonstration, and to limit the power of the police in regulating demonstrations.